IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3931 of 1996

to

SPECIAL CIVIL APPLICATIONNo 3935 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

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Appearance:

1. Special Civil Application No. 3931 of 1996

MR IS SUPEHIA for Petitioner No. 1

MR HEMANT M PRACHCHHAK AGP for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

#. That the petitioners have identical subject matter and the challenge to the impugned action of the respondent-authority is also the same. At the request of the learned advocates for the parties, all the matters are taken up for final hearing together.

#. According to the petitioners, they are serving as Armed Police Constables in Mounted Branch at Patan and by order dated 21st April, 1994, the petitioners came to be transferred to Patan in view of the bifurcation of the District of Mehsana. That the respondent authority has issued notices dated 30th August, 1994 and 10th October, 1994 and subsequently, final notice dated 20th February, 1996, by which the petitioners were asked to vacate the premises occupied by them and since the petitioners failed to vacate the premises, the respondent-authority by order dated 22nd April, 1996 ordered to deduct an amount of Rs. 800/- per month from the salary of the petitioners on account of the rent at the prevalent market rate from 22.6.1994.

#. According to the petitioners, the impugned order passed by the respondent-authority is unreasonable and arbitrary, inasmuch as recovery of market rent of Rs. 800/- per month from the salary of the petitioners, who are serving as Mounted Police will economically ruin the petitioners, since they are lowly paid employees. It is further stated by the petitioners that the petitioners are required to remain present at the headquarters, since Mounted Branch is attached to the headquarters only and, therefore also, the action of the respondent is not justified.

3.1 The petitioners have also relied on Rule 223(10) of the Gujarat Police Manual, by which it is provided that, allotment can be cancelled only in case of death, dismissal or retirement and in the instant case, when the petitioners are attached to the headquarters, they are not required to be evicted from the quarter. That according to the petitioners, no procedure as envisaged under the Public Premises (Eviction of Unauthorised Occupants) Act, 1972 is followed by the respondent-authority and, therefore also, the impugned action of the respondent-authority is illegal and is required to be quashed and set aside.

#. The learned AGP Mr. Hemant M. Prachchhak appearing for the respondent-authority has relied on the provisions of the Government Resolution dated 22.6.1992, by which, the authority is empowered to charge market rent from

unauthorised occupant, namely, the government servant even without following the procedure as laid down under the Public Premises (Eviction of Unauthorised Occupants) Act, 1972. According to Mr. Prachchhak, inspite of three notices, the petitioners have failed to hand over vacant possession of the quarters occupied by them and have continued to occupy the quarters without any just or proper reasons. Therefore, according to Mr. Prachchhak, the action of the respondent-authority of recovering market rent of Rs. 800/- per month from the petitioners cannot be said to be arbitrary in exercise of powers by the respondent-authority.

#. Having heard the learned advocates for the parties, it appears from the record of the petitions that similarly situated persons like the petitioners, by making representations to the Competent Authority by stating their genuine grievances and hardships, requested the authority to drop further action of recovering the market rent from the monthly salary of the petitioners. That such employees have narrated difficulties of getting accommodation at the place of transfer, no provision of government quarters available at the new place of transfer, or in a given case, their children suffering their education. Having carefully considered, such representations, the authority has passed appropriate order and after considering their cases sympathetically, decided not to recover market rent any further. However, a condition was attached in the said order passed by the Competent Authority that the petitioners would unconditionally withdraw the writ petitions filed in the High Court of Gujarat.

#. In the present case, the learned advocate for the petitioners states that the petitioners are agreeable to submit a detailed representation on the line of representation submitted by the similarly situated persons to the Competent Authority, to which the learned AGP has no objection, within four weeks from the date of the receipt of the order, with a request to consider their genuine grievances for not vacating the quarter allotted to them at the relevant point of time within the period stated in the notice issued by the authority. As and when such representations are made by the petitioners, the respondent-authority shall consider the same in accordance with law, keeping in mind the hardships and difficulties faced by the petitioners as Mounted Police. It is hoped that in view of the fact that the petitioners are lowly paid employees, the case is required to be considered by the respondent-authority as early as possible and preferably within six months

from the date of receipt of the order and till the representation is decided, the impugned order dated 22.4.1996 shall not be made effective. No further order is passed. Rule is partly made absolute accordingly. No order as to costs.

[ANANT S. DAVE, J.]
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